



DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

CECW-OR

6 SEP 1994

MEMORANDUM THRU COMMANDER, NORTH PACIFIC DIVISION

FOR COMMANDER, ALASKA DISTRICT

SUBJECT: Request for Section 404(q) Elevation, Klatt Bog 22

1. On 27 June 1994, the Acting Assistant Secretary of the Army (Civil Works) (AASA(CW)) responded to a request by the Environmental Protection Agency (EPA) for higher level review of a permit proposed by the U.S. Army Corps of Engineers Alaska District. The project proposed by Mr. Mike Cusack, Jr., involves the construction of a residential development in a portion of Klatt Bog, Anchorage, Alaska.

2. The request from EPA was made pursuant to Part IV of the 1992 Section 404(q) Memorandum of Agreement between the Department of the Army and EPA. The main issues EPA presented for consideration were based on their conclusion that substantial and unacceptable adverse impacts to an aquatic resource of national importance would occur. More specifically, the primary issues raised are summarized as follows:

a. The Klatt Bog is an aquatic resource of national importance.

b. Issuance of the Klatt Bog 22 permit will cause substantial and unacceptable adverse impacts to Klatt Bog from 15 acres of scrub-shrub/forested wetland and secondary and cumulative impacts to critical habitat which is located on the property as well as the remainder of Klatt Bog.

c. It has not been clearly demonstrated that the proposed project is the least environmentally damaging practicable alternative which meets the project purpose.

3. The AASA(CW) letter did not concur with the EPA position that the portion of Klatt Bog which will be directly impacted is an aquatic resource of national importance. However, the AASA(CW) did express concern that the potential for hydrological alterations and subsequent effects on the portion of the bog which is considered an aquatic resource of national importance be evaluated fully. In addition, the AASA(CW) notes that CENPA's alternatives analysis is not fully discussed in the decision document and must be clarified.

4. Prior to reaching a final decision, CENPA must:

a. Clarify the alternatives analysis. The decision document requires clarification with respect to discussing how the alternatives analysis was conducted and the basis for the decision by the District. The discussion should demonstrate consistency with the guidance concerning alternatives analysis which is provided in the Section 404(q) Elevations for Hartz Mountain and Old Cutler Bay. The discussion should also address how the analysis relates to the guidance provided in Regulatory Guidance Letter 93-2, Memorandum to the Field, subject: Appropriate Level of Analysis Required for Evaluating Compliance with the Section 404(b)(1) Guidelines Alternatives Requirements. This Regulatory Guidance Letter provides guidance on the flexibility, afforded by the Guidelines, which is based on the relative severity of the environmental impact of proposed discharges. The scope of analysis (i.e., level of scrutiny) of alternatives should be commensurate with the severity of the environmental impacts on aquatic resources and the scope/cost of the project. The first step in the analysis, then, would be to define the impact on aquatic resources of the proposed project and relate it to the project's scope and cost. Once this is established, alternatives should be assessed by first looking at the environmental impacts of the alternatives when compared to the environmental impacts of the proposed project. If an alternative is found to have no identifiable or discernible difference in impact on the environment, including impacts to the non-aquatic environment, the alternative can be dropped from the analysis as not being less environmentally damaging. Any alternative which is demonstrated to be less environmentally damaging must then be more rigorously evaluated for practicability. The criteria used to determine practicability must be clearly defined and consistently applied to all alternatives which were not dropped during the initial screening.

The discussion of the alternatives analysis, which is included in the decision document, is to include a description of the process or methodology as well as definitions of the criteria used in the analysis. As indicated in the guidance provided for Hartz Mountain, the District should determine the minimum feasible size, circumstances, etc., which characterize a viable project. As with any Section 404 permit decision, alternatives must be practicable to the applicant. However, in weighing and balancing the criteria, care must be taken to ensure that an individual criterion, or combination of criteria, does not result in undue deference to the applicant's wishes. The discussion must clearly demonstrate that all criteria, including consideration of the

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environmental impacts, have been consistently applied to the full array of final alternatives, including the applicant's preferred alternative. A matrix is a helpful tool in demonstrating that this has been accomplished.

b. Ensure against further degradation of Klatt Bog. The District should ensure that the proposed water control berm is effective in ensuring that the proposed project will not further degrade the bog with respect to the groundwater hydrology. One method of accomplishing this would be to add a special condition for a monitoring and contingency plan. Alternatively, the applicant may elect to conduct a more detailed evaluation of the effectiveness of the berm design (e.g., conduct geomorphic testing to the extent that the ability to effectively isolate the development from the bog is clearly demonstrated). Details of the alternative selected are to be developed in coordination with EPA.

5. If you have any questions or comments, please call Ms. Cheryl Smith at (202) 272-0817.

Encl



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